

California Regional Water Quality Control Board  
Santa Ana Region  
Staff Report  
February 29, 2008

**ITEM:** 20

**SUBJECT:** Order No. R8-2008-0029 Affirming Administrative Civil Liability  
Complaint No. R8-2008-0022, Ross Pallet, Inc., Santa Ana, Orange  
County

**BACKGROUND**

On January 29, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2008-0022 to Ross Pallet, Inc. (Ross Pallet) for alleged violations of the State General Permit for Storm Water Discharges Associated with Industrial Activity (General Permit). In the ACL (attached), the Assistant Executive Officer proposed an assessment of \$10,000 for the alleged violation.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2008-0029 affirming the proposed administrative civil liability complaint against Ross Pallet.

ACL No. R8-2008-0022 was issued by the Assistant Executive Officer to Ross Pallet for failing to submit the annual report as required by the General Permit.

**DISCUSSION**

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee, with the State Water Resources Control Board. One of the requirements of the General Permit is that permittees submit by July 1 of every year, an annual report that documents: storm water sampling and analysis results; visual observations of facility conditions; the facility's Annual Comprehensive Site Compliance Evaluation; and a certification as to the accuracy of the submitted information.

The required annual report was not received by July 2, 2007 (July 1 was a Sunday) and as a consequence, a Notice of Non-Compliance (NNC) was issued to Ross Pallet, by certified mail, on August 1, 2007. When Board staff received no response to the first NNC, a second NNC was issued on August 31, 2007, again by certified mail, and was received by Ross Pallet on September 12, 2007. In both NNCs, Board staff requested submittal of the completed 2006-07 annual report, a statement explaining why the annual report was not submitted by the July 2 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum

penalty of \$1,000 for failure to submit the annual report and the second NNC specified a deadline of September 28, 2007 for submittal of the annual report.

On September 25, 2007, Board staff spoke with Ms. Yesenia Yanez, Ross Pallet's contact, informing her of the impending mandatory minimum penalty conditions and providing the webpage where a blank 2006-2007 annual report form could be located. On September 27, 2007, Board staff spoke again with Ms. Yanez and was told that the completed 2006-2007 annual report would be submitted by the end of the day. On September 28, 2007, Board staff faxed a blank 2006-2007 annual report form to Ross Pallet at Ms. Yanez's request.

On October 30, 2007, Ross Pallet submitted a 2006-2007 annual report. No information regarding sampling, visual monitoring, or facility evaluation was provided with the report. Included was an explanation sheet stating that the personnel at Ross Pallet were unaware of any of the responsibilities required of permittees under the General Permit. Ross Pallet violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.

Ross Pallet failed to submit the required annual report to the Regional Board office within 60 days from the date on which the original NNC was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that an administrative civil penalty shall be imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000). In addition, Water Code Section 13385(c) provides that administrative civil liability may be imposed on any person who violates waste discharge requirements in an amount not to exceed \$10,000 per day of violation.

Section 13385(e) of the California Water Code specifies factors that the Board shall consider when establishing an amount of civil liability. A review of Ross Pallet's permit compliance history reveals that in the five years that Ross Pallet has been covered under the General Permit, they have never collected a storm water sample with the repeated explanation that no qualified storm events occurred during these four years. Further, Ross Pallet received two NNCs and paid an administrative civil liability of \$5,000 for the non-submittal of its 2005-06 annual report; received two NNCs and paid a mandatory minimum penalty of \$1,000 for the non-submittal of its 2002-03 annual report; and, received a Notice of Violation for late payment of its 2003-04 storm water permit fee.

Based on the history of non-compliance, the Assistant Executive Officer proposed that civil liability be imposed on Ross Pallet in the amount of \$10,000 for this violation.

### **RECOMMENDATION**

Board staff recommends that the Board affirm the assessment of \$10,000 specified in the Administrative Civil Liability Complaint issued by the Assistant Executive Officer on January 29, 2008, by adopting Order No. R8-2008-0029.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Order No. R8-2008-0029</b>
	)	
<b>Ross Pallet, Inc.</b>	)	<b>for</b>
<b>913 East Walnut Street</b>	)	<b>Administrative Civil Liability</b>
<b>Santa Ana, CA 92705</b>	)	
	)	
<b>Attention: Ms. Yesenia Yanez</b>	)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on February 29, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0022, dated January 29, 2008, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Sections 13385(c) and 13399.33(c) in the amount of \$10,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (General Permit). Ross Pallet, Inc. (Ross Pallet), is authorized to discharge storm water under the Permit, WDID 830I017644. The General Permit requires Ross Pallet to submit an annual report by July 1 of each year. Ross Pallet did not submit the annual report by July 2, 2007 (July 1, 2007 was a Sunday). Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Ross Pallet, the first one on August 1, 2007 and the second one on August 31, 2007. These NNCs reminded Ross Pallet that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required Ross Pallet to submit the annual report by September 28, 2007. Prior to September 28, 2007, Ross Pallet was also reminded by phone to submit the annual report. An incomplete annual report was received by this office on October 30, 2007.
2. Ross Pallet failed to submit the annual report to the Regional Board office within 60 days from the date of the original NNC.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) for non-submittal of an annual report under these circumstances.
4. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by

a regional board in an amount no to exceed \$10,000 per day of violation. The total maximum liability is \$1,200,000 (120 days from July 2, 2007 to October 30, 2007).

5. Water Code Section 13385(e) specifies factors that the Board shall consider in establishing an amount of civil liability, including prior history of violations. Ross Pallet has a history of violations including an administrative civil liability complaint (\$5,000) issued for the non-submittal of the 2005-06 annual report; a mandatory minimum penalty complaint (\$1,000) issued for non-submittal of the 2002-03 annual report. In addition, Ross Pallet received a number of NNCs for late submittal of annual reports and a Notice of Violation for late payment of annual fee for 2003-04. These and other factors were considered by the Assistant Executive Officer in establishing the amount of civil liability.
6. On January 29, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R8-2008-0022 to Ross Pallet proposing that the Board impose a penalty of \$10,000 on Ross Pallet for the violations cited above.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that, pursuant to California Water Code Sections 13385(c) and 13399.33(c), an administrative civil liability shall be imposed on Ross Pallet, Inc., in the amount of \$10,000, as proposed in Complaint No. R8-2008-0022 for the violations cited, payable as set forth below.

1. Ross Pallet shall pay \$10,000 to the State Water Resources Control Board by March 31, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 29, 2008.

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Gerard J. Thibeault  
Executive Officer

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R8-2008-0022</b>
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<b>Ross Pallet, Inc.</b>	)	<b>for</b>
<b>913 East Walnut Street</b>	)	<b>Administrative Civil Liability</b>
<b>Santa Ana, CA 92705</b>	)	
	)	
<b>Attention: Ms. Yesenia Yanez</b>	)	

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code, and may impose additional liability under Section 13385 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on February 29, 2008, at the City Council Chambers, in the City of Loma Linda. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of penalties by the Board. An agenda for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Ross Pallet, Inc. (hereinafter Ross Pallet), located at 913 East Walnut Street in Santa Ana, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 830I017644. The General Permit requires submittal of an annual report by July 1 of each year.
5. The 2006-2007 annual report, which was due on July 2, 2007, as July 1 was a Sunday, was not received from Ross Pallet. A Notice of Non-Compliance (NNC) was issued to Ross Pallet, by certified mail, on August 1, 2007. When Board staff did not receive a response to the first NNC, a second NNC was issued on August 31, 2007, again by certified mail, and that second NNC was received by Ross

Pallet on September 12, 2007. In both NNCs, Board staff requested the following: submittal of the completed annual report; a statement explaining why the annual report was not submitted by the July 2 deadline; and identification of the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure to submit the annual report. The second NNC requested submission of the annual report by September 28, 2007.

6. On September 25, 2007, Board staff spoke with Ms. Yesenia Yanez, Ross Pallet's contact, informing her of the impending mandatory minimum penalty conditions and providing the webpage where a blank 2006-2007 annual report form could be located. On September 27, 2007, Board staff spoke again with Ms. Yanez and was told that the completed 2006-2007 annual report would be submitted by the end of the day. On September 28, 2007, Board staff faxed a blank 2006-2007 annual report form to Ross Pallet at Ms. Yanez's request. On October 30, 2007, Ross Pallet submitted a 2006-2007 annual report. No information regarding sampling, visual monitoring, or facility evaluation was provided with the report. Included was an explanation sheet stating that the personnel at Ross Pallet were unaware of any of the responsibilities required of permittees under the General Permit. Ross Pallet violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 2, 2007.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2006-2007 annual report, Ross Pallet is alleged to have violated the General Permit for 120 days (from July 2, 2007 to October 30, 2007). The total maximum liability for this violation is \$1,200,000.
9. Section 13399.33(c) of the California Water Code requires that the Board impose a mandatory, minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors are addressed in the following table:

<b>Factor</b>	<b>Comment</b>
<b>A. Nature, Circumstance, Extent, and Gravity of Violation</b>	Ross Pallet did not submit their annual report despite repeated reminders by certified mail and by phone by Board staff. The preparation of an adequate annual report and the implementation of a monitoring plan are crucial to ensure that the BMPs implemented at the site are successful in reducing pollutant loads in storm water discharges. A review of Ross Pallet's past annual reports showed that they have never collected a storm water sample during the four years that they have been under the program. A general statement that has been included in each annual report states that no qualified storm events occurred during the year (i.e., for all storm events during this four year period, either the first hour of discharge occurred outside of normal business hours or the storm water discharge was not preceded by 3 working days without storm water discharge.)
<b>B. Culpability</b>	Ross Pallet failed to submit their annual report as required by the General Permit. Ross Pallet received two (2) certified mailings and three (3) phone calls reminding them that the annual report was overdue and the consequences of non-submittal.
<b>C. Economic Benefit or Savings</b>	Staff has estimated that Ross Pallet saved approximately \$2,000 during the 2006-2007 reporting year by not collecting and analyzing storm water samples, not performing the required observations and not completing and submitting their annual report in a timely manner.
<b>D. Prior History of Violations</b>	Ross Pallet received two Notices of Non-Compliance and paid a Mandatory Penalty in the amount of \$1,000 for the non-submittal of its 2002-2003 annual report. Ross Pallet received two Notices of Non-Compliance and paid an Administrative Civil Liability in the amount of \$5,000 for the non-submittal of its 2005-2006 annual report. Further, Ross Pallet received two Notices of Violation from the State Board for late payment of its 2003-2004 and 2005-2006 storm water permit fees.
<b>E. Staff Costs</b>	Board staff spent a total of 14 hours of staff time in association with this violation (@ an average of \$102.83 per hour, the total cost for staff time is \$1,440).
<b>F. Ability to pay</b>	Ross Pallet has not provided any information to indicate that it is unable to pay the proposed amount.

11. After consideration of the factors listed in Item 10, the Assistant Executive Officer proposes that civil liability be imposed on Ross Pallet in the amount of \$10,000 for the violations cited above.

### WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed in Item 11. The waiver form, the check and any other correspondence regarding this Complaint should be sent to this office at the address on this letterhead.

If you have any questions, please contact Michelle Beckwith at (951) 782-4433, or Mark Smythe at (951) 782-4998.

1/29/08  
Date

Kurt V. Berchtold  
Kurt V. Berchtold  
Assistant Executive Officer



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913 East Walnut Street )  
Santa Ana, CA 92705 )  
 )  
Attention: Ms. Yesenia Yanez )

Complaint No. R8-2008-0022  
for  
Administrative Civil Liability

### WAIVER OF HEARING

I agree to waive the right of Ross Pallet, Inc., to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0022.

I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$10,000. I understand that I am giving up the right of Ross Pallet, Inc., to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Ross Pallet, Inc.